MONTANA LEGISLATIVE HISTORY

Chapter 93 19 97

Bill H 108 S _____ Original bill & history ✓ C

H. Committee on Human Services & Aging

Hearing Date(s) Jan 20 ✓ C

Jan 27 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Public Health Welfare & Safety

Hearing Date(s) Feb 07 ✓ C

Feb 12 ✓ C

_____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
DIED IN COMMITTEE

HB 107 INTRODUCED BY KASTEN *LC0432 DRAFTER: MARTIN*

REVISE THE INDIVIDUAL INCOME TAX DEDUCTION FOR LONG-TERM CARE INSURANCE PREMIUMS

BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO TAXATION		
1/14	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/15	HEARING		
1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING PASSED	87	8
1/24	3RD READING PASSED	89	8
	TRANSMITTED TO SENATE		
1/25	FIRST READING		
1/25	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/05	HEARING		
2/14	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	50	0
3/07	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/12	SIGNED BY SPEAKER		
3/13	SIGNED BY PRESIDENT		
3/13	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 111		
	EFFECTIVE DATE: 03/20/97		

HB 108 INTRODUCED BY SWANSON *LC0326 DRAFTER: NISS*

REVISE CERTIFICATE OF NEED STATUTES

BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO HUMAN SERVICES & AGING		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/20	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	FISCAL NOTE PRINTED		
1/30	2ND READING PASSED	83	15
1/31	3RD READING PASSED	72	25
	TRANSMITTED TO SENATE		
2/03	FIRST READING		
2/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/07	HEARING		
2/14	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	50	0
3/07	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/13	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		

3/17 TRANSMITTED TO GOVERNOR
3/19 SIGNED BY GOVERNOR
CHAPTER NUMBER 93
EFFECTIVE DATE: 03/19/97

HB 109 INTRODUCED BY HARPER *LC0315 DRAFTER: KURTZ*

REVISE REGULATION OF PRIVATE FISH PONDS

BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE & PARKS

12/30 INTRODUCED
1/03 FISCAL NOTE REQUESTED
1/06 FIRST READING
1/06 REFERRED TO FISH, WILDLIFE & PARKS
1/13 FISCAL NOTE RECEIVED
1/13 FISCAL NOTE PRINTED
1/14 HEARING
1/28 TABLED IN COMMITTEE
4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
DIED IN COMMITTEE

HB 110 INTRODUCED BY SWANSON, ET AL. *LC0270 DRAFTER: PETESCH*

APPROPRIATE MONEY TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN

BY REQUEST OF GOVERNOR AND DEPARTMENT OF JUSTICE

12/30	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO APPROPRIATIONS		
1/14	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	78	22
2/26	3RD READING PASSED	71	28
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO FINANCE & CLAIMS		
3/10	HEARING		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	38	8
3/17	3RD READING CONCURRED	45	4
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/21	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 154		
	EFFECTIVE DATE: 03/26/97		

HB 111 INTRODUCED BY AHNER *LC0421 DRAFTER: MACMASTER*

REVISE THE LAWS RELATING TO THE IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS

BY REQUEST OF DEPARTMENT OF CORRECTIONS & THE DEPARTMENT OF JUSTICE

12/30 INTRODUCED
1/03 FISCAL NOTE REQUESTED
1/06 FIRST READING

HOUSE BILL NO. 108

INTRODUCED BY SWANSON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CERTIFICATE OF NEED STATUTES; ELIMINATING THE CERTIFICATE OF NEED REQUIREMENT FOR RESIDENTIAL TREATMENT FACILITIES, MEDICAL ASSISTANCE FACILITIES, MENTAL HEALTH CENTERS, MAJOR MEDICAL EQUIPMENT, AND INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING COUNCIL IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ADDING A DEFINITION OF "SWING BED"; CLARIFYING WHEN A CHANGE IN BED CAPACITY REQUIRES A CERTIFICATE OF NEED; DELETING THE PROHIBITION AGAINST REQUIRING A HEALTH CARE FACILITY TO OBTAIN A CERTIFICATE OF NEED FOR AN ACTION THAT WOULD NOT BE SUBJECT TO A REVIEW IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY; DELETING THE AUTHORITY FOR THE ADOPTION OF RULES GOVERNING ABBREVIATED CERTIFICATE OF NEED REVIEW; REVISING THE CERTIFICATE OF NEED APPLICATION PROCESS; PROVIDING THAT A CERTIFICATE OF NEED FOR A PROJECT EXPIRES WHEN THE PROJECT IS LICENSED; DELETING THE REQUIREMENT THAT A HOLDER OF AN UNEXPIRED CERTIFICATE OF NEED REPORT TO THE DEPARTMENT EVERY 6 MONTHS; ALLOWING THE PARTIES TO A RECONSIDERATION HEARING TO AGREE TO AN EXTENSION OF THE DECISION DEADLINE BEYOND 30 DAYS; EXEMPTING FROM THE CERTIFICATE OF NEED REQUIREMENT THE CONSTRUCTION OF A STATE-OWNED FACILITY AND RECONSTRUCTION OF A DAMAGED FACILITY UNDER CERTAIN CIRCUMSTANCES; REVISING APPLICATION AND RECONSIDERATION HEARING FEES; AMENDING SECTIONS 7-34-2102, 7-34-2201, 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-308, 50-5-309, 50-5-310, 50-10-101, 50-16-701, 50-60-205, 50-60-301, 50-78-103, 53-6-106, 53-6-110, AND 90-7-104, MCA; REPEALING SECTION 50-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-34-2102, MCA, is amended to read:

"7-34-2102. **Definition.** As used in this part, unless the context requires otherwise, ~~"hospital facilities"~~ the following definitions apply:

(1) "Hospital facilities" means a hospital or a hospital-related facility, including outpatient facilities, ~~public health centers,~~ rehabilitation facilities, long-term care facilities, infirmaries, and health care facilities, all as defined in 50-5-101. The term includes public health centers.

(2) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices."

Section 2. Section 7-34-2201, MCA, is amended to read:

"7-34-2201. **Erection and management of county health care facilities -- definition -- provision of health care services.** (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility, a hospice, a kidney treatment center, an outpatient facility, ~~a public health center,~~ a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as defined in 7-34-2102, or any combination and related medical facilities including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

Section 3. Section 50-5-101, MCA, is amended to read:

"50-5-101. **Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of

daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(6) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(7) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the

public health, welfare, or safety.

(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(10) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes ambulatory surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, ~~public health centers,~~ rehabilitation facilities, residential care facilities, and residential treatment facilities.

(18) "Health maintenance organization" means a public or private organization that provides or

arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(25) "Joint commission on accreditation of ~~hospitals~~ healthcare organizations" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102(4), or for individuals with related problems.

(e) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions that is used to provide medical or other health services and that costs a substantial sum of money.~~

~~(28)~~(27) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(29)~~(28) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(30)~~(29) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(31)~~(30) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

~~(32)~~(31) "Offer" means the representation by a health care facility that it can provide specific health services.

~~(33)~~(32) "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds. An ambulatory surgical facility is also an outpatient facility.

~~(34)~~(33) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(35)~~(34) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(36)~~(35) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.~~

~~(38)~~(36) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(39)~~(37) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(40)~~(38) "Residential care facility" means an adult day-care center, an adult foster care home, a

personal-care facility, or a retirement home.

~~(41)~~(39) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(42)~~(40) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(43)~~(41) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(44)~~(42) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the ~~statewide health coordinating council and the~~ governor and a statewide health coordinating council appointed by the director of the department.

(43) "Swing bed" means a licensed hospital or medical assistance facility bed that is also certified for providing long-term care pursuant to 42 CFR 482.66."

Section 4. Section 50-5-301, MCA, is amended to read:

"**50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility ~~or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4)~~. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant ~~or equipment~~ with respect to which an expenditure is made must be included in determining if the expenditure exceeds ~~the expenditure thresholds~~ $1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, ~~in any 2-year period~~ and no beds have been added or relocated during the 2 years prior to the date the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

~~(d) the acquisition by any person of major medical equipment, provided the acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;~~

~~(e)~~(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

~~(f)~~(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

~~(g)~~(f) the expansion of the geographical service area of a home health agency;

~~(h)~~(g) the use of hospital beds in excess of five to provide swing-bed services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

~~(i)~~(h) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care~~, inpatient mental health care~~, inpatient chemical dependency treatment, or inpatient rehabilitation.

~~(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a~~

~~certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.~~

~~(3)~~(2) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, ~~medical assistance facility, mental health center with inpatient services,~~ inpatient chemical dependency facility, or rehabilitation facility with inpatient services~~, or residential treatment facility~~. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection ~~(1)(i)~~ (1)(h); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.~~

~~(4) Expenditure thresholds for certificate of need review are established as follows:~~

~~(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.~~

~~(b) For construction of health care facilities, the expenditure threshold is $1,500,000.~~

~~(5) This section may not be construed to require a health care facility to obtain a certificate of need to undertake any activity that would not be subject to a certificate of need if undertaken by a person other than a health care facility.~~"

Section 5. Section 50-5-302, MCA, is amended to read:

"**50-5-302. Letter of intent -- application and review process.** (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of letters of intent and applications;

(b) the scheduling of reviews;

~~(c) the abbreviated review of a proposal that:~~

~~(i) does not significantly affect the cost or use of health care;~~

~~(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;~~

~~(iii) is necessary to comply with licensure or certification standards; or~~

~~(iv) would add a health service that is subject to a certificate of need review under 50-5-301(1)(c);~~

~~(d)~~(c) the format of public informational hearings and reconsideration hearings;

~~(e)~~(d) the circumstances under which applications may be comparatively reviewed; and

~~(f)~~(e) the circumstances under which a certificate of need may be approved for the use of hospital beds as swing beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.

(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing health care facility, they shall submit to the department a letter noting intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department.

(4) The department may determine that the proposals should be comparatively reviewed with similar proposals ~~unless, in the case of beds, the proposal is determined to be exempt from review~~ that are also subject to review.

(5) On the 10th day of each month, the department shall publish in a newspaper of general circulation in the area to be served by the proposal a description of each letter of intent received by the department during the preceding calendar month. Within 30 days of the publication, any person who desires comparative review with a proposal described in the publication must submit a letter of intent requesting comparative review.

(6) The department shall give to each person submitting a letter of intent written notice of the

deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

(7) Within 20 working days after receipt of an application, the department shall determine whether it is complete and, if the application is found incomplete, shall send a written request to the applicant ~~for~~ specifying the necessary additional information and a date by which the additional information must be submitted to the department. The department shall allow at least 15 days after the mailing of its written request for the submission of the additional information. Upon receipt of the additional information from the applicant, the department ~~shall have~~ has an additional 15 working days to determine if the application is complete and, if the application is still incomplete, to send a notice to the applicant that the application is ~~complete or~~ incomplete.

(8) If ~~a proposal is to undergo comparative review with another proposal but~~ the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by the department ~~rules~~, the application is considered withdrawn.

(9) If the department fails to send ~~the notices~~ either the request for additional information or the notice of incompleteness required by subsection (7) within the ~~periods~~ period prescribed in subsection (7), the application is considered to be complete on the last day of the time period during which the notice should have been sent.

(10) The review period for an application may be no longer than 90 calendar days after the application is initially received or, if the application is to be comparatively reviewed as provided in subsection (5), within 90 days after all applications to be comparatively reviewed are received. A longer period is permitted with the consent of all affected applicants.

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities ~~or equipment~~ affecting the same health service area.

(13) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion,

the applicant may apply to district court for a writ of mandamus to force the department to issue the certificate of need."

Section 6. Section 50-5-304, MCA, is amended to read:

"**50-5-304. Review criteria, required findings, and standards.** The department shall by rule promulgate and use, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the degree to which the proposal being reviewed:

(a) demonstrates that the service is needed by the population within the service area defined in the proposal;

(b) provides data that demonstrates the need for services contrary to the current state health care facilities plan, including but not limited to waiting lists, projected service volumes, differences in cost and quality of services, and availability of services; or

(c) is consistent with the current state health care facilities plan;

(2) the need that the population served or to be served by the proposal has for the services;

(3) the availability of less costly quality-equivalent or more effective alternative methods of providing the services;

(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(5) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which ~~such~~ the services are proposed to be provided;

(6) the consistency of the proposal with joint planning efforts by health care providers in the area;

(7) the availability of resources, including health ~~manpower,~~ and management personnel~~,~~ and funds for capital and operating needs, for the provision of services proposed to be provided and the availability of alternative uses of the resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project

reviewed on the costs of providing health services by the person proposing the construction project;

(10) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(11) in the case of a project to add long-term care facility beds:

(a) the need for the beds that takes into account the current and projected occupancy of long-term care beds in the community;

(b) the current and projected population over 65 years of age in the community; and

(c) other appropriate factors."

Section 7. Section 50-5-305, MCA, is amended to read:

"**50-5-305. Period of validity of approved application.** (1) ~~Unless an extension is granted pursuant to subsection (3), a~~ A certificate of need ~~shall expire~~ expires:

(a) 1 year after the decision to issue it is final if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

(b) 1 year after the date the project is commenced plus the estimated period of time for completion shown in the application if the approved project is not complete; ~~or~~

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted ~~hereunder~~ under this chapter, or the terms of the certificate of need; or

(d) on the date that the project for which the certificate of need was granted is first licensed by the department.

(2) For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under 50-5-306, the final decision will be that following the hearing or resolving the appeal.

(3) The holder of an unexpired certificate of need subject to expiration under the circumstances specified in subsection (1)(a) or (1)(b) may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant ~~such~~ an extension upon the applicant's demonstrating good cause as defined by department rule.

~~(4) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 6-month period after being granted a certificate of need until~~

~~completion of the project for which the certificate of need was issued.~~"

Section 8. Section 50-5-306, MCA, is amended to read:

"**50-5-306. Right to hearing and appeal.** (1) An affected person may request a contested case hearing before the department under the provisions of Title 2, chapter 4, by filing a written request with the department within 30 days after receipt of the notification required in 50-5-302(13). The written request for a hearing must include:

(a) a statement describing each finding and conclusion in the department's initial decision that will be contested at the hearing and why each finding and conclusion is objectionable or in error; and

(b) a summary of the evidence that will be submitted to contest the findings and conclusion identified in subsection (1)(a).

(2) The hearing must be limited to the issues identified under subsection (1) and any other issues identified through discovery.

(3) The public hearing must be held within 30 calendar days after the request is received unless the hearings examiner extends the time limit for good cause.

(4) The department shall make its final decision and serve the appellant with written findings of fact and conclusions of law in support of the decision within 30 days after the conclusion of the hearing unless the parties to the hearing agree to a different date.

(5) Any adversely affected person who was a party to the hearing may appeal the department's final decision to the district court as provided in Title 2, chapter 4, part 7.

(6) On application by a person whose proposal has been approved under the procedure provided for in 50-5-302, a district court may order a person who requested a contested case hearing to pay the successful applicant's costs and attorney fees incurred in the hearing and on appeal, if the court determines that the reasons for requesting the contested case hearing were frivolous.

(7) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 9. Section 50-5-308, MCA, is amended to read:

"**50-5-308. Special circumstances.** The department shall issue a certificate of need for a proposed capital expenditure if:

(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined

by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and

(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health care facilities plan."

Section 10. Section 50-5-309, MCA, is amended to read:

"**50-5-309. Exemptions from certificate of need review.** The following are exempt from a certificate of need review: ~~A project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, is exempt from certificate of need review~~

(1) construction of a state-owned facility; and

(2) repair or replacement of a facility damaged or destroyed as a result of fire, storm, civil disturbance, or an act of God if the use of the facility after repair or replacement is within the scope of the facility's original license issued pursuant to Title 50, chapter 5, part 2."

Section 11. Section 50-5-310, MCA, is amended to read:

"**50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee that is at least equal to 0.3% of either the capital expenditure or the operating expense for the first year as projected in the application, whichever is greater, except that the fee may not be less than $500.

~~(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department $500.~~

~~(4)~~(3) Fees collected under this section must be deposited in the general fund."

Section 12. Section 50-10-101, MCA, is amended to read:

"**50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 13. Section 50-16-701, MCA, is amended to read:

"**50-16-701. Definitions.** As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a

public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 14. Section 50-60-205, MCA, is amended to read:

"**50-60-205. When state building code applies -- health care facility and public health center doors.** (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102."

Section 15. Section 50-60-301, MCA, is amended to read:

"**50-60-301. Municipal and county building codes authorized -- health care facility and public health center doors.** (1) The local legislative body of a municipality or county may adopt a building code

by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102."

Section 16. Section 50-78-103, MCA, is amended to read:

"**50-78-103. Applicability -- exemptions.** (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 75-3-202 and implementing 75-3-104 and 75-3-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

(f) sealed containers of hazardous chemicals:

(i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or

(ii) at a facility of a distributor, ~~so~~ as long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

(a) a teaching, research, or testing laboratory, including any associated storeroom;

(b) a clinical laboratory or health care facility as defined in 50-5-101;

(c) a pharmacy as defined in 37-7-101; ~~or~~

(d) a public health center as defined in 7-34-2102; or

~~(d)~~(e) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing ~~such~~ the hazardous chemicals must comply with all provisions of this chapter."

Section 17. Section 53-6-106, MCA, is amended to read:

"**53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of public health and human services.

(b) "Health care facility" means a health care facility as defined in 50-5-101 and includes a public health center as defined in 7-34-2102.

(2) The department may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department may adopt rules as necessary to prescribe minimum standards for the maintenance and operation of health care facilities. Standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program must be consistent with those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and by the implementing regulations contained in Title 42 of the Code of Federal Regulations, as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department pursuant to Title 50, chapter 5.

(4) Standards adopted by the department may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities."

Section 18. Section 53-6-110, MCA, is amended to read:

"**53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health care facilities plan ~~prepared pursuant to 42 U.S.C. 300m-2(a)(2)~~.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health care facilities plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) Whenever the department of public health and human services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting."

Section 19. Section 90-7-104, MCA, is amended to read:

"**90-7-104. Eligible health facility.** (1) Eligible health facility means any structure or building used as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; public health center, as defined in 7-34-2102; center for persons with developmental disabilities; center for the handicapped; chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care facility; or other structure or facility related to any of the foregoing or required or useful for the operation

of a health facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

(2) An eligible health facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and eligible health facility does not include a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

NEW SECTION. **Section 20. Repealer.** Section 50-5-316, MCA, is repealed.

NEW SECTION. **Section 21. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 22. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0108, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising certificate of need statutes; eliminating the certificate of need requirement for residential treatment facilities, medical assistance facilities, mental health centers, major medical equipment, and inpatient mental health care provided by hospitals; deleting the requirement for licensure of public health centers; providing that the statewide Health Coordinating Council is appointed by the director of the Department of Public Health and Human Services; adding a definition of "swing bed"; clarifying when a change in bed capacity requires a certificate of need; deleting the prohibition against requiring a health care facility to obtain a certificate of need for an action that would not be subject to a review if undertaken by a person other than a health care facility; deleting the authority for the adoption of rules governing abbreviated certificate of need review; revising the certificate of need application process; providing that a certificate of need for a project expires when the project is licensed; deleting the requirement that a holder of an unexpired certificate of need report to the department every 6 months; allowing the parties to a reconsideration hearing to agree to an extension of the decision deadline beyond 30 days; exempting from the certificate of need requirement the construction of a state-owned facility and reconstruction of a damaged facility under certain circumstances; revising application and reconsideration hearing fees.

ASSUMPTIONS:
1. There is no fiscal impact on DPHHS Health Policy and Services operations. There will be no reduction of division staff as workloads will diminish only minimally after the elimination of these categories for certificate of need (CON).
2. The elimination of Medical Assistance Facilities as a reviewable item under CON will have no fiscal impact on the Medicaid Program.
3. Under the hospital exemption from CON enacted in 1989, major medical equipment has not been considered a reviewable item under CON. The bill simply clarifies this interpretation. Therefore, there is no fiscal impact due to this change.

FISCAL IMPACT:
None

Dave Lewis 1-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Emily Swanson 1/13/97
EMILY SWANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0108, as introduced

HB 108

Proponents' Testimony: Fran Buell, Area Coordinator from Gilford. *{Tape: 1; Side: A; Approx. Time Count: 3.2; Comments: See exhibit 2.}*

Kyla Hofeldt, Chinook. *{Tape: 1; Side: A; Approx. Time Count: 11.0; Comments: None.}*

Lindsay Schmidt, Havre. *{Tape: 1; Side: A; Approx. Time Count: 15.4; Comments: None.}*

Fran Buell *{Tape: 1; Side: A; Approx. Time Count: 19.0 ; Comments: Ms. Buell continued speaking on behalf of the bill.}*

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 25.0.}

Closing by Sponsor: REP. PECK *{Tape: 1; Side: a; Approx. Time Count: 32.0; Comments: REP. PECK CLOSED.}*

HEARING ON HB 108

Opening Statement by Sponsor: REP. SWANSON, HD 30, introduced the bill. {Tape: 1; Side: A; Approx. Time Count: 33.0; Comments: See exhibit 3.}

Proponents' Testimony: Nancy Ellery, Department of Public Health and Human Services. {Tape: 1; Side: A; Approx. Time Count: 39.0; Comments: See exhibit 4.}

{Tape: 1; Side: B; Approx. Time Count: 0; Comments: Nancy Ellery continued with her testimony.}

Rose Hughes, Executive Director of the Montana Nursing Home Association. {Tape: 1; Side: B; Approx. Time Count: 1.1.}

Pat Melby, Rimrock Foundation. {Tape: 1; Side: B; Approx. Time Count: 3.1; Comments: Mr. Melby would support the bill with the amendments.}

Melissa Case, United Health Care Workers Union. {Tape: 1; Side: B; Approx. Time Count: 3.7; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 6.7.}

Closing by Sponsor:
REP. SWANSON CLOSED. {Tape: 2; Side: A; Approx. Time Count: 13.1; Comments: None.}

HOUSE OF REPRESENTATIVES
ROLL CALL

HUMAN SERVICES COMMITTEE

DATE 1-20-97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. Loren Soft, Vice Chairman	✓		
Rep.Carolyn Squires, Vice Chairman	✓		
Rep. Darrel Adams	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski			✓
Rep. John Bohlinger	✓		
Rep. Bill Carey	✓		
Rep. Deb Kottel	✓		
Rep. Billie Krenzler	✓		
Rep. Brad Molnar			✓
Rep. Wes Prouse.	✓		
Rep. Diane Sands	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		

Amendments to House Bill No. 108
First Reading Copy

Requested by the Department of Public Health and Human Services
For the Committee on Human Services

Prepared by Ellie Parker

January 17, 1997

1. Title, line 11.
Strike: "ADDING A DEFINITION OF "SWING BED";"

2. Title, line 12.
Following: "NEED;"
Strike: "DELETING"
Insert: "REVISING"

3. Title, line 14.
Following: "FACILITY"
Insert: "SO THAT IT REFERS TO A NON-REVIEWABLE SERVICE RATHER THAN AN ACTION"

4. Title, lines 16 and 17.
Following: "PROCESS;" on line 16
Strike: "PROVIDING" on line 16 through "LICENSED;" on line 17

5. Title, line 22.
Following: "CIRCUMSTANCES;"
Strike: "REVISING APPLICATION AND"
Insert: "DELETING"

6. Page 8, lines 14 and 15.
Strike: subsection (43) in its entirety

7. Page 9, line 23.
Strike: "swing-bed"

8. Page 10.
Following: line 29
Insert: "(3) This section may not be construed to require a health care facility to obtain a certificate of need for a non-reviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

9. Page 11, line 15.
Strike: "as swing beds"

10. Page 14, line 17.
Following: "~~or~~"
Insert: "or"

11. Page 14, lines 20 through 22.
Following: "need" on line 20
Strike: "; or" on line 20 through "department" on line 22

12. Page 16, line 20.
Following: "0.3% of"
Strike: "either"
Following: "expenditure"
Strike: "or the operating expense for the first year as"

13. Page 16, line 21.
Following: "application,"
Strike: "whichever is greater,"

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 1-20-97

BILL NO._____ SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	FRAN BUELL	Gildford MT	HB184
(P) O I	Kyla Hoeldt + Farley	Chinook	HB184
(P) O I	Lindsay Schmidt + Hooper	Havre, MT	HB184
(P) O I	Shaina C. Hoeldt + Farley	Chinook, MT	HB184
(P) O I	JOEL W MEAD	HELENA	HB 108
P O I	Tom Cherry	Helena	MMIA
[redacted]			
P O I	Pat Melby	P.O. Box 1144 Helena 59624	HB 108
P O I	Charles Magraw	Helena	DPHHS
(P) O I	Bob Olsen MHA	Helena	Montana Hospital Assoc
P O I			
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P O I			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Opponents' Testimony: None.

Questions From Committee Members and Responses:
{Tape: 1; Side: 2; Approx. Time Count: 5.0; Comments: None:.}

Closing by Sponsor: Sen. Swysgood closed.
{Tape: 1; Side: 2; Approx. Time Count: 26.9; Comments: None.}

EXECUTIVE ACTION HB 298

MOTION: REP. DIANE SANDS MOVED H.B. 298 DO PASS
{Tape: 1; Side: 1;Approx.Time Count: 24.0; Comments: None

VOTE: The question was called. Motion passed roll call 11-4
{Tape: 1; Side: 1; Approx. Time Count: 24.0; Comments: None.}

EXECUTIVE ACTION ON HB 149

Motion: REP DIANE SANDS MOVED H.B.149 DO PASS
{Tape: 1; Side: 2; Approx. Time Count: 27.9; Comments: None.}

Motion/Vote: REP. SQUIRES moved to adopt Johnson amendments.
{Tape: 1; Side: 2; Approx. Time Count: 29.2; Comments: None.
Motion failed on roll call vote 6-9

Motion/Vote: REP KOTTEL motioned to accept paragraph 3 & 4 of same amendment. Motion failed roll call vote 9-6.
{Tape: 2; Side: 1; Approx. Time Count: 35.3; Comments: None.}

Motion/Vote: REP. SIMON MOVED HB 149 BE TABLED
Tape: 2; Side: 1; Approx. Time Count:37.6; Comments: None.}
Motion passed roll call vote 8-7.

EXECUTIVE ACTION ON HB ~~128~~ 108

EXHIBITS 4-5-6 Were passed out for the committee's consideration

Motion: REP.KOTELL Moved HB 108 Do PASS
{Tape: 2; Side: 1; Approx. Time Count: 5.0; Comments: N

Motion: REP . KOTELL moved to adopt the amendments.
{Tape: 2; Side: 2; Approx. Time Count: 1.3; Comments: None

Vote: Motion passed to adopt REP.KOTELL amendments 13-0
{Tape: 2; Side: 2; Approx. Time Count: 5.0; Comments: None.}

Motion\Vote: **REP. BOHLINGER** moved to adopt amendment. Motion failed 4-10 on a roll call vote.
{Tape: 2; Side: 2; Approx. Time Count: 36.6; Comments: None.}

Motion\Vote: REP. PROUSE moved to adopt amendment. Motion failed 5-9 on a roll call vote.
{Tape: 2; Side: 2; Approx. Time Count: 37.2; Comments: None.}

Motion\Vote: **REP. SQUIRES MOVED DO PASS AS AMENDED.**

HOUSE STANDING COMMITTEE REPORT

January 28, 1997

Mr. Speaker: We, the committee on **Human Services** report that **House Bill 108** (first reading copy -- white) **do pass as amended.**

Signed: _____
Duane Grimes, Chair

And, that such amendments read:

1. Title, line 11.
Strike: "ADDING A DEFINITION OF "SWING BED";"

2. Title, line 12.
Following: "NEED;"
Strike: "DELETING"
Insert: "REVISING"

3. Title, line 14.
Following: "FACILITY"
Insert: "SO THAT IT REFERS TO A NONREVIEWABLE SERVICE RATHER THAN AN ACTION"

4. Title, lines 16 AND 17.
Strike: "PROVIDING" on line 16 through "LICENSED;" on line 17

5. Title, line 22.
Strike: "REVISING APPLICATION AND"
Insert: "DELETING"

6. Page 8, lines 14 and 15.
Strike: subsection (43) in its entirety

7. Page 9, line 23.
Strike: "swing-bed"

8. Page 10.
Following: line 29

10:10 1-28-97

Committee Vote:
Yes 13, No 0.

200840SC.Hgd

Insert: "(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

9. Page 11, line 15.
Strike: "as swing beds"

10. Page 14, line 17.
Following: "~~or~~"
Insert: "or"

11. Page 14, lines 20 through 22.
Strike: "; or" on line 20 through "department" on line 22

12. Page 16, line 20.
Strike: "either"
Strike: "or the operating expenses for the first year as"

13. Page 16, line 21.
Strike: "whichever is greater,"

-END-

#

Amendments to House Bill No. 108
First Reading Copy

Requested by Rep. Bohlinger
For the Committee on Human Services and Aging

Prepared by David S. Niss
January 27, 1997

1. Title, line 7.
Following: "EQUIPMENT,"
Insert: "HOME HEALTH AGENCIES,"

2. Page 9, line 22.
Strike: subsection (f) in its entirety
Renumber: subsequent subsections

3. Page 10, lines 3 and 4.
Strike: "home health agency,"

4. Page 10, line 8.
Strike: "(1)(h)"
Insert: "(i)(g)"

#

Amendments to House Bill No. 108
First Reading Copy

Requested by Rep. Prouse
For the Committee on Human Services and Aging

Prepared by David S. Niss
January 27, 1997

1. Title, line 21.
Strike: "THE CONSTRUCTION OF A STATE-OWNED FACILITY AND"

2. Page 16, line 8.
Strike: "**Exemptions**"
Insert: "**Exemption**"

3. Page 16, lines 8 and 9.
Strike: "The following" on line 8 through "review:" on line 9

4. Page 16, lines 12 and 13.
Strike: "(1)" on line 12 through "repair" on line 13
Insert: "Repair"

5. Page 16, line 14.
Following: "God"
Insert: ","

6. Page 16, line 15.
Following: "2"
Insert: ", is exempt from a certificate of need review"

Amendments to House Bill No. 108
First Reading Copy

Requested by Rep. Grimes
For the Committee on Human Services and Aging

Prepared by David S. Niss
January 27, 1997

1. Title, line 11.
Strike: "ADDING A DEFINITION OF "SWING BED";"

2. Title, line 12.
Following: "NEED;"
Strike: "DELETING"
Insert: "REVISING"

3. Title, line 14.
Following: "FACILITY"
Insert: "SO THAT IT REFERS TO A NONREVIEWABLE SERVICE RATHER THAN AN ACTION"

4. Title, lines 16 AND 17.
Strike: "PROVIDING" on line 16 through "LICENSED;" on line 17

5. Title, line 22.
Strike: "REVISING APPLICATION AND"
Insert: "DELETING"

6. Page 8, lines 14 and 15.
Strike: subsection (43) in its entirety

7. Page 9, line 23.
Strike: "swing-bed"

8. Page 10.
Following: line 29
Insert: "(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

9. Page 11, line 15.
Strike: "as swing beds"

10. Page 14, line 17.
Following: "~~or~~"
Insert: "or"

11. Page 14, lines 20 through 22.
Strike: "; or" on line 20 through "department" on line 22

12. Page 16, line 20.
Strike: "either"
Strike: "or the operating expenses for the first year as"

13. Page 16, line 21.
Strike: "whichever is greater,"

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HUMAN SERVICES COMMITTEE

DATE 1-27-97 BILL NO. 108 NUMBER _____

MOTION: Do Pass As Amended

Kottel

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. Loren Soft, Vice Chairman	✓	
Rep. Carolyn Squires, Vice Chairman	✓	
Rep. Darryl Adams	✓	
Rep. Chris Ahner		
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. John Bohlinger	✓	
Rep. Bill Carey	✓	
Rep. Deb Kottel	✓	
Rep. Billie Krenzler	✓	
Rep. Brad Molnar		
Rep. Wes Prouse		
Rep. Diane Sands	✓	
Rep. Bruce Simon	✓	
Rep. Liz Smith	✓	
	13	0

3 Absent

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HUMAN SERVICES COMMITTEE

DATE 1-27-97 BILL NO. 108 NUMBER _____

MOTION: Berkeniger Amendment

NAME	AYE	NO
Rep. Duane Grimes, Chairman		✓
Rep. Loren Soft, Vice Chairman		✓
Rep. Carolyn Squires, Vice Chairman		✓
Rep. Darryl Adams		✓
Rep. Chris Ahner		
Rep. Ellen Bergman		✓
Rep. Bill Boharski	✓	
Rep. John Bohlinger	✓	
Rep. Bill Carey		✓
Rep. Deb Kottel		✓
Rep. Billie Krenzler		✓
Rep. Brad Molnar	✓	
Rep. Wes Prouse		✓
Rep. Diane Sands		✓
Rep. Bruce Simon	✓	
Rep. Liz Smith		
	4	10

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HUMAN SERVICES COMMITTEE

DATE 1-27-97 BILL NO. 108 NUMBER Amendment

MOTION: Prouse Amendment

NAME	AYE	NO
Rep. Duane Grimes, Chairman		✓
Rep. Loren Soft, Vice Chairman		✓
Rep. Carolyn Squires, Vice Chairman		✓
Rep. Darryl Adams	✓	
Rep. Chris Ahner		
Rep. Ellen Bergman		✓
Rep. Bill Boharski	✓	
Rep. John Bohlinger	✓	
Rep. Bill Carey		✓
Rep. Deb Kottel		✓
Rep. Billie Krenzler		✓
Rep. Brad Molnar	✓	
Rep. Wes Prouse	✓	
Rep. Diane Sands		✓
Rep. Bruce Simon		✓
Rep. Liz Smith		
	5	9

HOUSE OF REPRESENTATIVES
ROLL CALL

HUMAN SERVICES COMMITTEE

DATE 1-27-97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. Loren Soft, Vice Chairman	✓		
Rep.Carolyn Squires, Vice Chairman	✓		
Rep. Darrel Adams	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. John Bohlinger	✓		
Rep. Bill Carey	✓		
Rep. Deb Kottel	✓		
Rep. Billie Krenzler			✓
Rep. Brad Molnar	✓	~~✓~~ ok	
Rep. Wes Prouse.	✓		
Rep. Diane Sands	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		

Tanya Ask said from Rhode Island's experience, premiums would go up about 30 cents per month, but would depend on the kind of mandates currently on the books and what kind of coverage are people buying for themselves or their employee groups. Their estimate is premiums would go up one to one and one-half percent from where they are now.

SENATOR DePRATU said, since the State Auditors office is in favor of this for private plans, what would their position be for inclusion of the state employee and university groups, schools, counties, and cities.

Claudia Clifford clarified what kind of self-funded plans that would be affected. Self-funded plans that are entirely self-funded are exempted by federal law (ERISA) law, and the Legislature cannot pass state legislation that would affect them, which includes the state employees plan and the plan offered to Montana Power employees. State legislation can affect ME laws, but are currently exempted by state law from most of the mandated benefits.

Closing by Sponsor:
SENATOR MIGNON WATERMAN said she would be willing to work with the committee on the proposed amendments to the bill. The amendment offered by **SENATOR CHRISTIAENS** expands the definitions farther than is prudent at this time for the State of Montana. Six states have passed parity laws and she would support Blue Cross and Blue Shield's amendments. Most of the mental health coverage, in Montana, will be under managed care and would like the language to say the physical health is covered under the managed care. She said they are looking for equity and, if physical health coverage is provided under a managed care system, they would approve similar provisions for mental health coverage. There were some good points made in testimony about the state plan and those who would not be covered, because there is no desire to get into cost shifting. She would have no problem with including the state employees and thinks there would be no additional cost to the state. Costs can be controlled by treating mental illness just as physical health is treated. Mental illness also affects physical health.

The hearing recessed from 5:02 to 5:16 PM

HEARING ON HB 108

Sponsor: **REP. EMILY SWANSON, HD 18, Bozeman**

Proponents: **Nancy Ellery, Department of Health**
Rose Hughes, Montana Health Care Assn.
Bob Olson, MT Hospital Assn.

Opponents: None

Opening Statement by Sponsor:
REP. EMILY SWANSON, HD 18, Bozeman, said HB 108 relates to the certificate of need and is a consensus bill between all of the concerned parties. Certificate of need is a process to control a portion of the health care costs and is a cost control measure. The reason for HB 108 is to get rid of the portions of the certificate of need process that aren't working but not eliminate the whole process. Certificate was put in place in 1975 and has gone through various changes, and now it is necessary to change it again. Referring to the brochure "Montana's Certificate of Need (CON) Program" which describes the program, **(EXHIBIT 24)** she listed the programs which will be retained and those which will be dropped.

Proponents' Testimony:
Nancy Ellery, Department of Public Health and Human Services, testified in support of HB 108. **(EXHIBIT 25)**

Rose Hughes, Montana Health Care Association, said they support HB 108.

Bob Olson, Montana Hospital Association, said they support HB 108. He said when the House Human Services committee debated this bill, there was a question about the wisdom of Certificate of Need and whether it should be market driven. Until someone reforms the market of payment, the controls on the supply can't be undone.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:
REP. EMILY SWANSON said this is a good bill and went through the House fairly easily and the only question that came up regarded home health. **SENATOR CHUCK SWYSGOOD** has agreed carry the bill.

WHO DO I CONTACT?

Program staff are available to provide technical assistance to any applicant, at all stages of the CON process. If you have questions or need further information, please contact staff, as listed below:

DPHHS, Health Policy and Services Division
Health Systems Bureau
Bureau Chief
Robert Moon 444-4488

Health Assessment and Resource Development Section
Section Manager
Charles Aagenes 444-4474

Certificate of Need Program
Program Officer
Colleen Casey 444-3121

Program Officer
Gary Rose 444-4349

Support Staff
Connie Woldtvedt 444-4473

DPHHS, Quality Assurance Division
Certification Bureau
Bureau Chief
Linda Sandman 444-2038

Licensure Bureau
Bureau Chief
Roy Kemp 444-2868

WHAT ARE CON'S BENEFITS?

The benefits of CON can reach beyond the issues of cost containment and service regulation:

CON encourages health care facilities/providers to develop long-range operational and capacity plans based on local community health care needs;

CON requires considerations of personnel and financial feasibility as well as need;

CON encourages the development of affordable and accessible health services to all areas of the state;

CON encourages the consideration of more cost-effective strategies through the review of alternative services;

CON promotes the sharing of services, especially in rural areas, where operational and administrative costs can threaten facility survival; and

CON offers a forum for public input and community involvement prior to the establishment of facilities and services.

Montana Department of
Public Health & Human Services
Certificate of Need Program
1400 Broadway Ave., Cogswell Building 206-A
Helena, Montana 59620
(406) 444-4473 [TELEPHONE]
(406) 444-1861 [FAX]

10/96
400 copies of this public document were published at an estimated costs of $.36 per copy, for a total of $142.75, which includes $142.75 for printing and $0 for distribution.

& WELFARE
EXHIBIT NO. 24
DATE 2/7/97
BILL NO. HB108

MONTANA'S CERTIFICATE OF NEED (CON) PROGRAM

WHAT IS CERTIFICATE OF NEED?

Certificate of Need (CON) programs are state regulatory mechanisms that exist in approximately 40 states and are designed to control a portion of the health care costs of communities.

CON requires that certain health care facilities and services submit applications to the state to obtain approval before initiating projects which require capital expenditures above certain dollar thresholds, introduce new services, or expand beds or services.

Montana's CON program has existed since 1975. Currently, the program is located within the Health Policy and Services Division of the Department of Public Health and Human Services.

Anyone interested in filing a CON application will need to refer to the law and rules pertaining to CON. These include:

- *Montana Code Annotated (MCA) 50-5-Parts 1 and 3;*
- *Administrative Rules of Montana (ARM) 16.32.101-134;*
- *The 1993 State Health Plan (SHP) component pertaining to the project.*

Only certain types of facilities or services are reviewable. The following facilities and services are subject to review:

- Ambulatory surgical services
- Community mental health centers
- Home health services
- Inpatient chemical dependency facilities
- Inpatient psychiatric facilities for adults/children
- Inpatient rehabilitation facilities
- Intermediate care facilities for persons with mental retardation (ICFs/MR)
- Medical assistance facilities (MAFs)
- Nursing home services
- Specialty mental health centers
- Residential treatment facilities

REVIEWABLE OR NOT?

Reviewable projects primarily involve large capital expenditures or expansions in bed capacity or services by the facilities previously listed. Projects which require CON review include:

- Capital expenditures over $1,500,000;
- Changes in bed capacity of a facility through an increase in the number or a relocation of beds;
- Additions of a health service that will result in annual operating expenses of $150,000 or more;
- Construction, development, or establishment of a facility;
- Establishment of a home health agency or expansion to another county;
- Use of hospital beds (greater than five) to provide skilled nursing care (swing beds).

Some projects can be considered non-reviewable, thereby foregoing the full CON review, if the facility informs the Department ahead of the time of the activity. For example, with proper notification:

- Five or less swing beds are non-reviewable;
- Addition of ten beds, or 10% of licensed beds, whichever is less, is non-reviewable (provided the SHP shows an unmet need and there has been no change to the license in two years);
- Changes of ownership are non-reviewable (thirty days ahead of transaction).

Without proper notification (a letter of intent), these "non-reviewables" can become reviewable.

Any health care facility considering development should contact the CON Program well in advance, before proceeding with the project, to determine if the project is reviewable.

Any applicant approved by the CON program must contact the licensure/certification programs regarding the project to ensure compliance.

HOW DOES THE PROCESS WORK?

Generally, CON reviews usually take between four and six months to complete. The process involves:

- An applicant files a letter of intent (LOI), declaring the intent to submit an application for the proposed project;
- The Department publishes a list of all letters of intent received during the preceding calendar month on the 10th of every month in the nearest newspaper(s) for which a LOI has been filed;
- Anyone may submit a competing letter of intent within thirty days after the newspaper publication;
- After thirty days, the Department notifies the applicant(s) of the deadline for submission of an application(s), giving each applicant 90 days;
- The applicant may submit the application anytime within the deadline period; along with the application, the applicant must pay the CON fee: $500 or .3% of the project's capital expenditure, whichever is greater;
- When an applicant submits an application, the Department's 90-day decision deadline begins; in comparative reviews, the decision deadline period begins upon receipt of the last application;
- The Department determines if an application contains the required information, and asks additional questions if the application is not complete;
- Informational hearings are held as necessary or requested within the Department's 90-day decision period;
- The Department renders the decision by the 90th day; affected parties have 30 days to request a reconsideration.

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES
HEALTH POLICY & SERVICES DIVISION

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

COGSWELL BLDG., 1400 BROADWAY
PO BOX 202951
HELENA, MONTANA 59620-2951

TESTIMONY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

HOUSE BILL 108 - REVISING CERTIFICATE OF NEED STATUTES

Mr Chairman, I am Nancy Ellery, Administrator of the Health Policy and Services Division of the Department of Public Health and Human Services. This division is responsible for the development and implementation of state health policy, including administration of the certificate of need program.

I am here to testify in support of HB 108.

The CON program is the mechanism the state uses to evaluate major expenditures and services for certain health care facilities. The program has been in place in various forms since 1975.

As you know, CON has historically been a contentious issue and can be divided by those who either love or hate CON depending on its impact on their particular facility and market share.

The department has done their best to listen and incorporate industry concerns while at the same time protecting the integrity of the program.

The purpose of this bill is to eliminate five categories from certificate of need review. The categories include:

mental health centers
residential treatment services
inpatient psychiatric services
medical assistance facilities
major medical equipment

Experience has shown that there is little incentive to develop and expand unnecessary services in these categories.

With the exception of medical assistance facilities, the CON program rarely receives requests for review in these categories. The department has determined that, even without review, it is unlikely that uncontrolled growth in these services will occur.

For the mental health categories, implementation of managed mental health care will control for unnecessary development and expansion.

There has been growth in the number of medical assistance facilities but there are already extensive review requirements for MAFS under conditions of the Medicare waiver and licensure. The department felt additional review through CON was not necessary.

Major medical equipment has not been reviewed since hospitals were removed from CON in 1989. This bill puts in statute what has been practice since that time.

In addition to the elimination of five categories, other language changes were made to clarify or eliminate language which was outdated and to make the process as user friendly to the provider as possible.

Some of the substantive changes include the following:

1. Allows the Department Director rather than the Governor to appoint a statewide health coordinating council to review and approve the state health plan;

2. Clarifies when a change in bed capacity requires a CON;

3. Streamlines the application process and removes certain post-approval reporting requirements;

4. Allows parties to a reconsideration hearing to agree to an extension of the deadline for a decision beyond 30 days;

5. Removes fees for requesting a reconsideration hearing.

All of these changes were proposed after extensive involvement with the affected parties. The review process started in March of last year. Meetings were held with provider and consumer groups to discuss the proposed changes. These discussions continued as late as January of this year. Several amendments are being introduced by the sponsor to reflect concerns expressed in this most recent meeting.

In addition to industry involvement, the department presented the proposed changes in reviewable categories to the Health Care Advisory Council. The council endorsed the changes and included them as a recommendation in their report to the Governor and to the 97 Legislature.

If these changes are approved, there will only be five reviewable categories remaining. These include home health, nursing homes, ambulatory surgical centers, inpatient rehabilitation facilities and intermediate care facilities for the mentally retarded.

The department and others felt it was important to retain CON review on these categories because of the potential impact removing them could have on the state budget and on access to care. The department will continue to evaluate this in light of the changing health care market place and recommend further changes as necessary.

You may be interested to know that the Health Care Advisory Council also voted to introduce a joint resolution this session to study the effectiveness of CON on long term care. Representative Grimes has agreed to request this interim study as a committee bill.

The department remains concerned about the impact of regulation on the health care marketplace and feels this bill goes a long way to remove unnecessary regulation. Under current law, of the 40 states that have CON programs, only seven review fewer categories than Montana. If this bill passes, only four states will review fewer categories.

This bill provides an appropriate balance between removing CON when it is not necessary and retaining it when it is necessary to prevent service duplication and unnecessary health care expenditures.

I urge you to vote do pass on HB 108.

MONTANA SENATE
1997 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 2/7/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. LARRY BAER	✓		
SEN. CHRIS CHRISTIAENS	✓		
SEN. BOB DE PRATU	✓		
SEN. SHARON ESTRADA	✓		
SEN. DOROTHY ECK	✓		
SEN. EVE FRANKLIN	✓		
SEN. FRED THOMAS	✓		
SEN. JIM BURNETT, VICE CHAIRMAN	✓		
SEN. STEVE BENEDICT, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

Child and Family Services Council will be elevated to Department-wide perspective.

SENATOR CHRISTIAENS said he is concerned with consolidation, because they become so large that people's voices get lost. He asked **Laurie Ekanger** how this can be avoided.

Laurie Ekanger said they didn't plan to spring this on people, and their plan is to work with the councils that are there, work with every group and consolidate as necessary.

SENATOR DOROTHY ECK said she looked at the number of committees and is concerned about the amount of time department directors and those running programs spend going to meetings. She asked if anything is going to be done with mental health center committees.

Laurie Ekanger said the advisory council for emotionally disturbed children is being eliminated, then deferred the question to **Gary Curtis.**

Gary Curtis, Department of Health, said that council is on the list to be statutatorily be repealed, so its duties have already been combined with another mental health advisory council.

SENATOR ECK asked if the DD wanted to be a part of collaborative efforts.

Keith Colbo said he can't answer that.

Gary Curtis said they do participate through the ICC, in that the Department is represented on the Interagency Coordinating council, but the DD community has been the least interested in decentralization efforts.

Closing by Sponsor:
SENATOR CHUCK SWYSGOOD said SB 288 takes some of the restrictions associated with advisory councils out of the statutes and allows the Department of Health the flexibility to get services out to communities. The number of councils and the amount of time the agency spends could be better used to provide services.

Note: the committee recessed from 5:24 to 5:31 PM

EXECUTIVE ACTION ON HB 108

Motion/Vote: **SENATOR FRED THOMAS moved HB 108 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.**

SENATOR CHUCK SWYSGOOD will carry HB 108.

SENATE STANDING COMMITTEE REPORT

February 13, 1997

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill 108 (third reading copy -- blue), respectfully report that House Bill 108 be concurred in.

Signed: _____
Senator Steve Benedict, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

341216SC.SRF

MONTANA SENATE
1997 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 2/12/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. LARRY BAER	✓		
SEN. CHRIS CHRISTIAENS	✓		
SEN. BOB DE PRATU	✓		
SEN. SHARON ESTRADA		✓	
SEN. DOROTHY ECK	✓		
SEN. EVE FRANKLIN	✓		
SEN. FRED THOMAS	✓		
SEN. JIM BURNETT, VICE CHAIRMAN	✓		
SEN. STEVE BENEDICT, CHAIRMAN	✓		

SEN:1997
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CS-09